

## UNITED STATES DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE

### *Office of Business Liaison*

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### U.S. EMPLOYMENT OF CANADIAN AND MEXICAN PROFESSIONALS UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

#### General Information about TN Status

Since the effective date of January 1, 1994, (NAFTA) facilitates travel to and employment in the United States (US)<sup>1</sup> of certain Canadian and Mexican workers. NAFTA created TN classification for eligible Canadian and Mexican professional workers and affected terms of Canadians' admissions to the US under other classifications.

A TN position must require services of a NAFTA Schedule 2 professional (see attached list); the TN employee must possess the credentials required as well as proof of qualifying citizenship. TN status allows unlimited multiple entries to the US for the period of service required by the US employer (includes foreign employers), up to a maximum of one year, extendible indefinitely as long as the temporary purpose of the employment continues.

#### Annual TN Admissions

There is no annual limit on TN-1 admissions from Canada. Mexican TN professionals may not exceed 5500 admissions per year.

#### Self-Employment in the U.S.

**TN:** Members of Schedule 2 professions who are self-employed outside the US may pursue business relationships from outside the US (e.g. contracts for services) with US-based companies and obtain TN status to engage in these prearranged activities in the US. However, under TN classification an alien is not permitted to render services to a corporation or other entity in which he/she is a controlling owner or shareholder.

**B-1:** NAFTA does not allow self-employed Canadian or Mexican business visitors to establish US business offices to service US clients. Contracts for consulting or employment services may not be carried out in B status.

#### TN Processing and Admissions Procedure

Canadians may apply for TN-1 classification directly at Class A ports of entry to the US or at pre-flight or pre-clearance stations in Canada<sup>2</sup>. Documentation must include proof of Canadian citizenship, \$50 filing fee, proof of required Schedule 2 credentials, and letter from US employer describing nature and duration of professional employment and salary/wages in the US<sup>3</sup>. Canadian citizens are visa exempt and do not need consular visas to travel or apply for admission to the US. TN-1 applicants at land ports-of-entry must also pay a modest I-94 fee.

TN-2 nonimmigrants from Mexico must be approved beneficiaries of I-129 petitions filed by prospective US employers and approved by INS' Nebraska Service Center. Documentation must include proof of Mexican citizenship, \$110 filing fee, a Form ETA-9035<sup>4</sup> Labor Condition Attestation (LCA) certified by the US Labor Department, proof of the purpose for entry, and proof of participation in a permitted NAFTA professional activity. Mexicans applying for admission to the US under TN-2 classification must obtain visas at US consulates.

<sup>1</sup> US employment under TN classification does not include services performed in Guam, the Northern Mariana Islands, American Samoa and the US Virgin Islands.

<sup>2</sup> Canadian citizens who enter the US more than twice per year in B, E, L or TN status are eligible for automated border inspections via the INSpass program. Applications are made on Form I-833 at Los Angeles, Miami, Newark, New York JFK, San Francisco, Toronto, Vancouver, and Washington Dulles Airports. INSpass cards are free of charge and valid for one year. Mexican citizens are not eligible for the INSpass program.

<sup>3</sup> The employer letter should include a job description including professional activities and duties, duration of TN alien's services in the US, requirements for position to be filled (training, license, experience, etc.), alien's credentials, and salary/benefits.

<sup>4</sup> Form ETA-9029 is used for NAFTA schedule nurses. For other professions, USDOL's new 3-page ETA 9035 became required by fax (preferred) or mail as of February 5, 2001. This form may be downloaded from [www.ows.doleta.gov](http://www.ows.doleta.gov).

## Family Members

Spouses and unmarried children under 21 of Canadian and Mexican professionals obtain **TD** status. They can be included on the application of the TN principal (no separate filing fees) and admitted for the same duration of stay. TD nonimmigrants may study in the US under this classification, but are not authorized for employment. Canadian dependents' eligibility may be adjudicated at a US port-of-entry. Although Mexican family members are automatically included in TN petitions filed at the Nebraska Service Center, they must file separate application for TD visas at US consulates. **Note:** Dependents are not required to be Canadian or Mexican citizens.

## Other Nonimmigrant Classifications under NAFTA

**B-1** (see also bulletin 3 regarding business visitors):

NAFTA specified as acceptable certain specific B-1 activities.<sup>5</sup> In general, however, the same general business visitor criteria and restrictions that apply to aliens from all other countries also apply to Canadian and Mexican visitors.

**E-1 & E-2** (see also bulletin 4 regarding treaty traders and investor)

E-1 and E-2 visas, which are required for otherwise visa exempt Canadians as well as for Mexicans, may be denied to Canadian or Mexican citizens whose entry into the US may adversely affect settlement of a labor dispute certified by the Department of Labor or employment of a person involved in a certified strike or work stoppage.

**L-1** (see also bulletin 10 regarding intracompany transferees)

Applications for Canadian citizen intracompany transferees, including those under approved blanket L petitions, may be processed directly at Class A ports of entry to the US<sup>6</sup>. Mexican citizens must obtain L visas prior to entry into the US, once approved as beneficiaries of petitions for L-1a or L-1b classification. L visas may be denied to any Canadian or Mexican citizen whose entry into the US may adversely affect settlement of a US Department of Labor-certified strike or work stoppage.

## INS Adjudication of TN petitions

NEBRASKA SERVICE CENTER

850 S Street

Lincoln, Nebraska 68501

Telephone (402) 323-7830

## Change of Status to TN

**Canadian citizens** present in the US in B, L, H, or other nonimmigrant status may change to TN status in two ways:

US employer files Form I-129 at Nebraska Service Center (includes request for change of status for beneficiary); \$110 fee includes dependents. Form I-539 is used by dependents filing separately. Depart the US and apply for TN classification directly upon re-entry. See page 1 for applicable fees.

**Mexican citizens** present in the US in B, L, H or other nonimmigrant status may change to TN-2 status **only** by applying to the Nebraska Service Center (supra) in the same manner as Canadian applicants for change to TN-1 status under #1 above, except that TN-2 principals and TD dependents must include copies of their Forms I-94.

<sup>5</sup> In addition to standard B-1 activities that may be performed by aliens from any country (see bulletin 3), the following are acceptable if undertaken independently by a citizen of Canada or Mexico or on behalf of a Canadian or Mexican enterprise: Technical, scientific and statistical researchers conducting research; custom harvesting by a combine owner supervising a harvesting crew (includes petitioning for H-2b workers); purchasing and management personnel conducting commercial transactions; market researchers and analysts; trade fair and promotional personnel attending trade conventions; sales representatives and agents taking orders or negotiating contracts for goods or services; buyers engaged in purchasing activities; transportation operations transporting goods or passengers between the US, Mexico, and/ or Canada (point to point deliveries NOT permitted within the US); Canadian customs brokers performing brokerage duties vis a vis US exports; US customs brokers performing brokerage duties vis a vis Canadian exports to or through the US; customs brokers performing facilitation services vis a vis import or export of goods; if stipulated in a sales agreement, installers, repair and maintenance personnel performing warranty or contract services work incidental to sale of foreign origin equipment or machinery purchased from entity outside the US; tour bus operators working with groups of passengers on a tour of the US from Canada or Mexico or meeting US passengers for a tour of Canada or Mexico; translators or interpreters performing employee services (self-employment excluded).

<sup>6</sup> Forms I-129 and supporting documentation may be reviewed by any inspector at a Class A port-of-entry (free trade examiners specializing in NAFTA classifications are no longer available). Questionable cases subject to denial may be forwarded to the applicable INS Service Center, which issues notices of approval or denial in all cases.

## Change of TN Employment

**TN-1 Canadians** may change employers or add an employer by filing Form I-129 with the Nebraska Service Center or by departing the US and presenting revised documentation, relating to new employment, at the port of re-entry.

**TN-2 Mexicans** may change or add employers **only** by filing Form I-129 with the Nebraska Service Center.

## Extension of TN Stay

Unlimited extensions may be granted to TN nonimmigrants (and dependents) in one-year increments

**Canadians** who wish to apply for extensions while remaining in the US may file Form I-129 plus a \$110 filing fee for the TN principal and I-539 plus \$120 filing fee for family members (inclusive) with the Nebraska Service Center. Alternatively, TN principals and family members can depart the US and reapply for admission in TN and TD status. A charge of \$6.00 will apply to each replacement Form I-94 required. TD family members traveling without TN principals extend their stays by applying at ports of re-entry with copies of the principal's Form I-797.

**Mexicans** apply for extensions of TN-2 status **only** by filing Form I-129 with a \$110 filing fee and copies of the I-797 approval notice, the LCA (which must remain valid), and the Form I-94. Applications on Form I-539 must be filed concurrently by dependent family members with filing fee of \$120.

## Adjustment of Status from TN

A TN nonimmigrant must maintain the intent to depart the US at the conclusion of the TN employment. With respect to any given admission, a TN or TD nonimmigrant should not intend to remain in the US permanently or to achieve permanent resident status. Although a pending labor certification or Form I-140 naming TN alien as beneficiary is not a bar to admission, a pending application for adjustment of status is a bar to TN admission. A TN (or derivative dependent) alien who applies for adjustment must work and travel thereafter as an adjustee.

**Note:** Eligible Canadians or Mexicans may change from TN to another nonimmigrant classification that permits dual intent and subsequently petition for permanent residence and adjustment under the new classification.

## Understanding Schedule 2 Professions

Most NAFTA professions are self-explanatory. However, certain historical problem areas merit special attention:

**Management consultants:** these professional services are expected to be of a temporary, periodic, or fixed consulting nature rather than performed as full-time employment. The duties may be consist of consulting and/or analysis focusing on ways to improve the "sponsoring" entity's structure, efficiency, profits, etc. *Although a management consultant may be a manager, few managers qualify as management consultants.*

**Computer systems analysts:** this profession should not be confused with computer programming or computer scientists. These professionals use their knowledge and skills to solve computer problems, enable computer technology to meet the individual needs of the "sponsoring" entity, and help that entity achieve maximum benefit from its investment in equipment, personnel, and business processes. *Although, in practice, management consultants frequently require computer systems expertise and computer systems analysts frequently deal with computerized management systems, the descriptions of positions to be filled by either of these NAFTA professionals must substantiate the need for this level of professional skill as well as specify the skill needed.*

**Engineers:** engineers may not fill computer-related jobs under TN classification unless they have credentials as computer or software engineers from institutions that recognize computer or software engineering as bona fide engineering specialties offering full engineering credentials, such as professional engineering licenses. Furthermore, the US positions to be filled must require this level of credentials.

**Scientific technicians/technologists:** These professionals use principles and theories of science and mathematics to solve problems and improve products and processes, but their services are more practically oriented than those of the scientists whom they support. They may set up, operate, and maintain laboratory instruments, monitor experiments, make observations, calculate and record results, and perhaps develop conclusions. Most scientific technicians specialize in a particular discipline, such as agricultural, biological, chemical, etc.

**Medical technologists:** These professionals generally have at least bachelor's degrees in medical technology or life sciences, or a combination of formal training and work experience. They perform complex biological, chemical, hematological, immunological, microscopic and bacteriological tests for the purpose of diagnosing, preventing, or treatment of disease. This profession does not include x-ray, radiological, sonogram, nuclear medical, or dental technicians.

## TN professions (NAFTA Schedule 2)

<b>Professions</b>	<b>Required Credentials</b>
Accountant	1, CPA, CA, CGA or CMA
Architect	1 or 2
Computer Systems Analyst	1 or 4 & 3
Disaster Relief Insurance Claims Adjuster (employed by Canadian or Mexican company or independent)	1 & 3 or 4 & 3
Economist	1
Engineer	1 or 2
Forester	1 or 2
Graphic Designer	1 or 4 & 3
Hotel Manager	1 or 4 & 3 (in hotel mgmt field)
Industrial Designer	1 or 4 & 3
Interior Designer	1 or 4 & 3
Land Surveyor	1 or 2
Landscape Architect	1
Lawyer (incl. Notary in Quebec)	LLB, JD, LLL, BCL or 1 (5 years) or bar membership
Librarian	MLS or BLS (for which 1 is prerequisite)
Management Consultant	1 or equivalent experience as established by statement or credential attesting to 5 years experience in the field or 5 years experience in specialty field relating to consulting agreement
Mathematician (incl. Statistician)	1
Range Manager/Conservationist	1
Research Assistant (post-secondary)	1
Scientific Technician/Technologist <sup>7</sup>	Possession of theoretical knowledge of, ability to solve practical problems in, or ability to apply principles to basic or applied research of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics
Social Worker	1
Sylviculturist (incl. forestry specialist)	1
Technical Publications Writer	1 or 4 & 3
Urban Planner (incl. Geographer)	1
Vocational Counselor	1

**\*KEY TO SYMBOLS** 1 = Baccalaureate/Licenciatura degree 2 = State/provincial/federal license<sup>8</sup> 3 = 3 years relevant experience 4 = post-secondary diploma<sup>9</sup> or certificate<sup>10</sup>

<sup>7</sup> A TN alien in this category must work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics.

<sup>8</sup> This refers to any document issued by a state, provincial or federal government, or under its authority (as opposed to a local government) that permits a person to engage in a regulated activity or profession.

<sup>9</sup> This refers to a credential issued on completion of two or more years of post-secondary education by an accredited academic institution in Canada or the US.

<sup>10</sup> This refers to the same credential as in FN 9 above, but which is issued by the federal or state government of Mexico, an academic institution recognized by the federal or state government, or academic institution created by federal or state law.

<b><u>Medical Specialists</u></b>	
Dentist	<b><u>Required credentials</u></b> DDS, DMD, Doctor en Odontologia or Doctor en Chirugia Dental or 2
Dietitian	1 or 2
Medical (Laboratory) Technologist	1 or 4 & 3
Nutritionist	1
Occupational Therapist	1 or 2
Pharmacist	1 or 2
Physician (for teaching or research only)	MD, Doctor en Medicina, or 2
Physiotherapist/Physical Therapist	1 or 2
Psychologist	1 or 2
Recreational Therapist	1
Registered Nurse	1 or 2
Veterinarian	DVM, DMV, Doctor en Veterinaria or 2
<b><u>Scientists</u></b>	
Agriculturist (Agronomist)	1
Animal Breeder	1
Animal Scientist	1
Apiculturist	1
Astronomer	1
Biochemist	1
Biologist	1
Chemist	1
Dairy Scientist	1
Entomologist	1
Geneticist	1
Geochemist	1
Geologist	1
Geophysicist (incl. Oceanographer in Mexico & US)	1
Horticulturist	1
Meteorologist	1
Pharmacologist	1
Physicist (incl. Oceanographer in Canada)	1
Plant Breeder	1
Poultry Scientist	1
Soil Scientist	1
Zoologist	1
<b><u>Teachers</u></b>	
College	1
Seminary	1
University	1

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